

P.E.R.C. NO. 2017-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-028

MANVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Board's request for a restraint of binding arbitration of a grievance seeking additional compensation for an alleged workload increase following the Board's implementation of schedule changes for the 2016-2017 school year, finding the claim to be severable from the schedule changes.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Sciarrillo Cornell Merlino McKeever & Osborne, LLC, attorneys (Anthony P. Sciarrillo, on the brief; Marcie L. Mackolin, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys (Keith Waldman, on the brief; Kathleen L. Kirvan, on the brief)

DECISION

On February 1, 2017, the Manville Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Manville Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it allegedly changed the work schedule and workload of secondary school faculty for the 2016-2017 school year.

The parties have filed briefs and exhibits. The Board filed the certification of its Superintendent. These facts appear.

The Association represents the Board's certificated staff including teachers. The Board and the Association are parties to

successive collective negotiations agreements in effect from July 1, 2013 to June 30, 2014 and July 1, 2014 through June 30, 2017.

The grievance procedures end in binding arbitration.

Article 15, "Teaching Hours and Teaching Load," of the CNA provides in relevant part:

B. The duty-free lunch period for certificated staff in the high school and [intermediate school] shall be thirty (30) minutes on a regular school day.

C. [Intermediate school] and high school teachers shall receive not less than one preparation period per day of not less than forty (40) minutes, on a regular school day.

D. [Intermediate school] and high school classroom teachers shall have no more than six assigned periods involving classroom instruction. Such teachers . . . shall be assigned to no more than four consecutive periods of instruction, and shall be released from a duty period assignment. Such teachers assigned to six periods of classroom instruction shall receive a stipend of \$3,500 per year.

A change in the schedule implemented for 2016-2017 reduced teaching periods for secondary school faculty from 9 to 8 but lengthened the students' lunch period. As a result, teachers with five periods of instruction had two duty periods; a 40 minute duty period as in past years, and an additional 18 minute period for lunch coverage. The teachers who taught for six periods, who had no duty periods in prior years, now had an 18 minute period for lunch coverage. The Association argues that the assignment of the additional 18 minute duty period triggers

an obligation for the Board to negotiate over additional compensation.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any defenses the employer may have. *Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.*, 78 N.J. 144, 154 (1978).

*Local 195, IFPTE v. State*, 88 N.J. 393, 404-405 (1982)

lists the standards for determining mandatorily negotiability:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

We must balance the parties' interests in light of the particular facts and arguments presented. *City of Jersey City v. Jersey City Police Officers Benevolent Ass'n*, 154 N.J. 555, 574-575 (1998).

The Board has devoted the majority of its argument to its contention that restructuring the 2016-2017 teacher work day did

not violate the CNA or any past practice. Those assertions do not present a negotiability defense and are beyond our jurisdiction. They may be made to an arbitrator.<sup>1/</sup>

The Board also asserts that class scheduling and assign of duties are issues of educational policy and so, too, are measures to reduce operational costs. However, the Association's grievance does not and could not seek to undo the schedule changes or assignments made by the Board regardless of how long the past schedule had been the practice in the District.

That being said, the request for additional compensation for an alleged increase in workload is severable from the schedule and assignment changes. Arbitration of such claims would not significantly interfere with the changes implemented by the Board for the 2016-2017 work year. See Atlantic City Bd. of Ed. and Atlantic City Ed. Ass'n, P.E.R.C. No. 2012-31, 38 NJPER 257 (¶87 2011), aff'd, 39 NJPER 431 (¶139 2013), certif. den., 215 N.J. 487 (2013) (claim for compensation for additional bilingual evaluations negotiable and arbitrable); Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987) (board had prerogative to assign additional teaching periods, but majority representative could arbitrate severable compensation claim);

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<sup>1/</sup> Likewise, we make no finding with regard to the Association's claim that there was a past practice regarding duty periods and the number of instructional periods assigned.

Roselle Park Bd. of Ed., P.E.R.C. No. 2013-55, 39 NJPER 307 (¶105 2013) (additional compensation for lunch supervision).

Accordingly, the Association may arbitrate its claim that the daily duty assignment of 18 minutes of lunchroom coverage entitles the affected secondary school teachers to additional compensation.

ORDER

The request of the Manville Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall was not present.

ISSUED: April 27, 2017

Trenton, New Jersey